

REMARKS

The Office Action dated August 26, 2004 has been received and carefully considered. In this response, claims 22, 23, 31 and 32 have been amended and new claims 43-45 have been added. The amendments to the claims do not narrow the scope of the claims and no new matter is introduced by the amendment to the claims or the addition of claims 43-45. Reconsideration of the outstanding objections and rejections in the present application therefore is respectfully requested based on the following remarks.

Objection to the Claim 32

At page 2 of the Office Action, claim 32 was rejected for depending from itself. Claim 32 has been amended to properly depend from claim 31. Withdrawal of this rejection therefore is respectfully requested.

Obviousness Rejection of Claims 22-42

At page 2 of the Office Action, claims 22, 23, 25, 26, 30-32, 34, 35 and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miloslavsky (U.S. Patent No. 6,477,565) in view of Newman (U.S. Patent No. 6,757,551). At page 6 of the Office Action, claims 24, 33 and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miloslavsky in view of Newman and further in view of Borella (U.S. Patent No. 6,587,433). At page 7 of the Office Action, claims 27-29 and 36-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miloslavsky in view of Borella and further in view of Newman. At page 9 of the Office Action, claims 40-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miloslavsky in view of Newman and further in view of Borella. These rejections are respectfully traversed.

Newman, upon which the Examiner relies for every rejection of the claims, was filed on April 20, 2001. The present application was filed September 26, 2000. The present application therefore predates the actual filing date of Newman, so Newman does not qualify as 102(e) prior art solely on account of its actual filing date. Newman, however, is a continuation-in-part of application no. 09/433,024, which was filed on November 18, 1999. As provided by the M.P.E.P.,

The 35 U.S.C. 102(e) date of a reference that did not result from, nor claimed the benefit of, an international application is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 if the prior application(s) properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph. . . . *The subject matter used in the rejection must be disclosed in the earlier filed application in compliance with 35 U.S.C. 112, first paragraph, in order for that subject matter to be entitled to the earlier filing date under 35 U.S.C. 102(e).*

M.P.E.P. § 706.02(f)(1)(8th Ed.)(emphasis added); see also *M.P.E.P.* § 2136.2.

As the above-cited passage demonstrates, the Office has the burden of establishing that the parent application of Newman discloses the subject matter of Newman upon which the Examiner relies in order to apply the priority date of the parent application. The Office Action makes no reference to the parent application to which Newman makes a § 120 priority claim. Consequently, the Office Action fails to establish that the parent application discloses (in the context of 35 U.S.C. 112, first paragraph) the subject matter of Newman upon which the Examiner relies. The Office therefore cannot rely on the priority date of the parent application in establishing Newman as qualified 102(e) prior art at this time. Absent a showing by the Office that the parent application of Newman does in fact support the relied-upon subject matter of Newman, the Applicant respectfully submits that Newman does not qualify as prior art and therefore cannot be the basis of any rejection of the claims. As the Office Action improperly uses Newman in the rejections of all of the claims, the Applicant respectfully submits that the obviousness rejections of claims 22-42 are improper at this time and withdrawal of these rejections therefore is respectfully requested.

Addition of New Claims 43-45

Claims 43-45 have been added. Support for these new claims may be found in the specification, drawings and claims as originally filed.

Claim 43, from which claims 44 and 45 depend, recites, in part, the limitations of a user control module removably attached to a display screen module and comprising means for determining whether the display screen module and the user control module are attached and means for communicating a special purpose packet to the base station via a transceiver in response to a determination that the display screen module and the user control module are

separated so as to establish a low-latency connection for communicating packetized voice data, the special purpose packet including an indicator that the base station is to give priority to packets having voice data communicated between the base station and the portable device. Claim 44 recites the additional limitations of wherein the user control module further comprises means for terminating the low-latency connection in response to a determination that the display screen module and the user control module are reattached. Claim 45 recites the additional limitations of wherein the indicator includes a minimize delay flag.

It is respectfully submitted that the Office Action fails to demonstrate that the cited references (including Newman) disclose or suggest, alone or in combination, each and every limitation recited in claims 43-45.

Conclusion


In view of the foregoing, the Applicant respectfully submits that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 01-0365.

Respectfully submitted,

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Date



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